

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	Facility ID No. 24250
<b>John L. White</b>	)	NAL/Acct. No. MB-200841410026
	)	FRN: 0008960726
Licensee of KOLJ(AM)	)	File No. BSTA-20090604ACD
Quanah, Texas	)	

**FORFEITURE ORDER**

**Adopted: April 17, 2012****Released: April 18, 2012**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to John L. White ("White"), licensee of Station KOLJ(AM), Quanah, Texas ("Station"), for willfully and repeatedly violating Section 301 of the Communications Act, as amended ("Act"),<sup>1</sup> and Sections 73.1350 and 73.1745 of the Commission's Rules ("Rules"),<sup>2</sup> and willfully violating Section 73.1690 of the Rules.<sup>3</sup> The violations involve White's unauthorized operation of the Station at a variance from his license without first filing for and obtaining Commission approval for modifying the Station's facilities.

**II. BACKGROUND**

2. On June 5, 2008, the Station went silent due to severe storms that caused damage to the Station's equipment, particularly its tower, which collapsed.<sup>4</sup> On June 9, 2008, Media Technology, the Station's former licensee, filed a request for Special Temporary Authority ("STA") for the Station to remain silent. On February 9, 2009, the Media Bureau ("Bureau") granted the request.<sup>5</sup>

3. On June 4, 2009, White notified the Bureau that the Station had resumed operation on March 19, 2009, with a replacement tower at a different electrical height from its licensed tower. White filed a concurrent request for an engineering STA to operate with the replacement tower, specifying a height of 75.7 electrical degrees, reduced from its authorized height of 93.4 electrical degrees. On July 22, 2009, the Bureau granted White's engineering STA request. However, the Bureau found that White returned the Station to the air at an antenna height and power level at a variance from its authorization without first filing a modification application and receiving Commission approval of such an application, in

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 U.S.C. § 73.1350; 47 U.S.C. § 1745.

<sup>3</sup> 47 U.S.C. § 73.1690.

<sup>4</sup> At the time the Station went silent it operated under the call sign KREL(AM) and was licensed to Media Technology Ventures Holding, LLC ("Media Technology"). Media Technology voluntarily assigned the Station's license to White on September 2, 2008. See File No. BAL-20080721AAN.

<sup>5</sup> See *Letter to First Broadcasting Investment Partners, LLC*, Reference 1800B3-KAW (MB Feb. 9, 2009); see also 47 U.S.C. § 312(g).

violation of Sections 73.1690(b)(1) and (b)(5) of the Rules.<sup>6</sup> The Bureau also found that White violated Sections 73.1350 and 73.1345 of the Rules by engaging in unauthorized operation of the Station from March 19, 2009, thru June 22, 2009.<sup>7</sup>

4. On October 9, 2009, the Bureau issued a Notice of Apparent Liability for Forfeiture and Order in the amount of seven thousand dollars (\$7,000) to White for these violations.<sup>8</sup> White filed a response requesting cancellation or reduction of the forfeiture (“Response”) on November 3, 2009.

5. In the Response, White admits to the violations but maintains that the proposed forfeiture should be cancelled or reduced because: (1) the Station serves a geographical area that consistently receives fewer than six stations; (2) any violation of the Rules was inadvertent and resulted from his lack of experience with making technical filings required by the Commission; and (3) he is unable to pay the proposed forfeiture amount.

### III. DISCUSSION

6. The Bureau assessed the forfeiture in this case in accordance with Section 503(b) of the Act,<sup>9</sup> Section 1.80 of the Rules,<sup>10</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>11</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, the record of compliance, ability to pay, and such other matters as justice may require.<sup>12</sup>

7. White argues the Bureau should waive or reduce the forfeiture because the Station plays an important role in transmitting local information to an area consistently receiving fewer than six stations.<sup>13</sup> We disagree. While we laud White for serving his community, such service does not justify reducing or canceling the forfeiture. Indeed, every broadcast station must serve the public interest to qualify for and maintain its license.<sup>14</sup>

8. White also argues that any violation of the Rules was inadvertent and resulted from his lack of experience with the Commission filing process.<sup>15</sup> However, as the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC’s requirements are

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<sup>6</sup> 47 C.F.R. § 73.1690(b)(1), (b)(5).

<sup>7</sup> 47 C.F.R. § 73.1350; 47 C.F.R. § 1345.

<sup>8</sup> *John White*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 12541 (MB 2009) (“NAL”).

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>12</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>13</sup> Response at 3.

<sup>14</sup> *See, e.g., Thousand Islands Corp.*, Memorandum Opinion & Order, 47 FCC 2d 264, 266 (1974) (“licensees are expected to make continued efforts to serve the community to which they are licenses and will not be relieved of liability for violations by the fact that they fulfill their responsibility to serve their communities”).

<sup>15</sup> Response at 2-3.

willful violations.<sup>16</sup> All licensees, regardless of experience level, are responsible for ensuring compliance with the Rules.<sup>17</sup> Therefore, this argument does not warrant cancellation or reduction of the forfeiture.

9. Finally, White argues it would be a financial hardship for him to pay the forfeiture.<sup>18</sup> The Commission will not consider reducing or cancelling a forfeiture in response to an inability to pay claim unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflect the licensee’s current financial status.<sup>19</sup> In general, a licensee’s gross revenues are the best indicator of its ability to pay.<sup>20</sup> White provided copies of his 2009 and 2010 federal personal income tax returns.

10. Here, cancellation of the forfeiture is inappropriate. The Commission uses gross income as the primary measuring stick by which it evaluates a sole proprietor’s ability to pay.<sup>21</sup> In this case, White’s tax returns for 2009 and 2010 show gross income in the amounts of \$79,388 and \$83,719, respectively, for an average yearly income of \$81,553.<sup>22</sup> The proposed forfeiture of seven thousand dollars (\$7,000) represents roughly 8.5 percent of White’s average gross income from 2009-2010. Although we are unwilling to cancel the forfeiture altogether,<sup>23</sup> we believe that a reduction in the total forfeiture amount to four thousand dollars (\$4,000) is appropriate.<sup>24</sup>

11. We have examined White’s response to the *NAL* in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that White willfully and repeatedly violated Section 301 of the Act and Sections 73.1350 and 73.1745 of the Rules and willfully violated Section 73.1690 of the Rules. However, for the reasons set forth above, we find that reducing the forfeiture to four thousand dollars (\$4,000) is warranted.

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<sup>16</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”) (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

<sup>17</sup> See, e.g., *Rittenour Consolidated School District*, Forfeiture Order, 25 FCC Rcd 3266, 3267 (MB 2010) (licensee’s general manager’s failure to familiarize himself with Commission procedures did not excuse Rule violation).

<sup>18</sup> Response at 4.

<sup>19</sup> *Victory Power & Ministries*, Forfeiture Order, 25 FCC Rcd 17098, 17100 (MB 2010).

<sup>20</sup> *Peak Communications, Inc.*, Letter, 25 FCC Rcd 16188, 16189-90 (MB 2010).

<sup>21</sup> See *Richard P. Marburger*, Letter, 24 FCC Rcd 13622 (MB 2009) (considering a sole proprietor’s gross income in evaluating claim for financial hardship).

<sup>22</sup> We have considered two years’ worth of tax returns as evidence of a licensee’s inability to pay. See, e.g., *North Custer Radio, Inc.*, Letter, 25 FCC Rcd 12634, 12636 (MB 2010) (holding that tax returns submitted for 2005 and 2006 adequately demonstrated an inability to pay).

<sup>23</sup> See *Southern Broadcasting & Investment Co., Inc.*, 26 FCC Rcd 442, 43-44 (MB 2011) (declining to cancel proposed forfeiture where losses were 12 percent of gross revenue over the three years of returns provided).

<sup>24</sup> *Id.* at 444 (reducing forfeiture from \$7,000 to \$3,200, approximately 5 percent of licensee’s average gross annual revenues).

#### IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>25</sup> that John L. White SHALL FORFEIT to the United States the sum of four thousand dollars (\$4,000) for willfully and repeatedly violating Section 301 of the Communications Act, as amended,<sup>26</sup> and Sections 73.1350 and 73.1745 of the Commission's Rules,<sup>27</sup> and willfully violating Section 73.1690 of the Rules.<sup>28</sup>

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>29</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Act. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).<sup>30</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Alexander.Sanjenis@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, DC 20554.<sup>31</sup>

14. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Mr. John L. White, Box 396, Quanah, TX 79252.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>25</sup> 47 C.F.R. §§ 0.283, 1.80.

<sup>26</sup> 47 U.S.C. § 301.

<sup>27</sup> 47 U.S.C. § 73.1350; 47 U.S.C. § 1745.

<sup>28</sup> 47 U.S.C. § 73.1690.

<sup>29</sup> 47 U.S.C. § 504(a).

<sup>30</sup> See 47 C.F.R. § 1.1914.

<sup>31</sup> *Id.*